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No. 128, Original

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

STATE OF ALASKA,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

On Motion for Leave to File a Complaint

REPLY BRIEF FOR PLAINTIFF

Of Counsel:

JOHN G. ROBERTS, JR.
GREGORY G. GARRE
HOGAN & HARTSON L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004
(202) 637-5810

G. THOMAS KOESTER
2550 Fritz Cove Road
Juneau, Alaska 99801
(907) 789-6818

* Counsel of Record

BRUCE M. BOTELHO
Attorney General
JOANNE M. GRACE *
LAURA C. BOTTGER
KATHRYN A. SWIDERSKI
Assistant Attorneys General
STATE OF ALASKA
Department of Law
1031 W. Fourth Avenue
Anchorage, Alaska 99501
(907) 269-5100

Counsel for Plaintiff

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The State of Alaska agrees with the United States that Alaska's complaint "satisf[ies] the threshold jurisdictional and prudential criteria for an original action," and that Alaska accordingly "should be granted leave to file its complaint." U.S. Br. at 14. Alaska further states as follows:

1. The hypothetical "jurisdictional concern" noted—but then dismissed—by the United States, *see id.* at 17-20, is just that. As the United States acknowledges, "Alaska has provided adequate notice with regard to those marine submerged lands that are currently included in and administered by the Forest Service as part of the Tongass National Forest and those submerged lands that are currently included in and administered by the National Park Service as part of Glacier

Bay National Park and Preserve." *Id.* at 18. Counts II and III of the State's complaint are by their terms addressed to those lands, and, as the United States agrees, "adequate notice" has been provided with respect to those lands. *Id.* at 18. Any tracts for which such notice has not been given are not at issue because, simply stated, they are not included within the State's complaint.

2. In an effort to simplify and facilitate this litigation, Alaska and the United States have attempted to summarize the issues raised by the State's complaint. *See id.* at 23-24. We agree with the United States that these issues should be referred to a Special Master appointed by this Court, with the understanding that these issues are necessarily preliminary in nature and that the parties "may be able to refine the statement of issues as the case progresses." *Id.* at 24. By agreeing to this "fair description of the issues," *id.*, neither party has waived its right to litigate "arguments or defenses fairly included therein," or to seek leave to assert new or different claims or defenses in the customary fashion.

3. In discussing Alaska's claims, the United States has purported to state what Alaska must establish "[t]o succeed on its claim[s]." *Id.* at 10; *see id.* at 12, 13. Similarly, the United States has summarized its legal "responses to Alaska's claims for relief," *id.* at 23, and proffered what it "would demonstrate" in response to Alaska's claims. *See id.* at 22-24. Such characterizations of law, arguments, and proffers are "premature at this stage," *id.* at 22, and Alaska in no way embraces them in agreeing with the United States that this action should be allowed to go forward. Alaska has set forth its claims and basic legal theories in its complaint and opening brief. Any further consideration of such matters should await full briefing and argument on the merits.

For present purposes, the Court need only take note that the parties agree that the instant territorial dispute is sufficiently weighty to rise to an original proceeding in this Court.

* * * *

For the foregoing reasons, and those in the State of Alaska's complaint and supporting brief, the Court should grant Alaska's motion for leave to file a complaint, direct the United States to file an answer, and, in accordance with the usual practice, refer the action to a Special Master.

Respectfully submitted,

Of Counsel:

JOHN G. ROBERTS, JR.
GREGORY G. GARRE
HOGAN & HARTSON L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004
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G. THOMAS KOESTER
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Department of Law
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Anchorage, Alaska 99501
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Counsel for Plaintiff